

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES SMALL BUSINESS  
ADMINISTRATION, as Receiver for  
PROSPERO VENTURES, LP,

No C 07-3735 VRW  
ORDER

Plaintiff,

v

HIGH GROWTH MANAGEMENT, LTD,  
Defendant.

Plaintiff seeks default judgment that defendant breached its partnership agreement with Prospero Ventures by failing to make its agreed capital contribution in full. Plaintiff filed its complaint on July 19, 2007. Doc #1. Defendant was served on August 29, 2007, but did not respond. Doc #4. On October 18, 2007, the clerk entered default. Doc #7.

1 Plaintiff filed a motion for default judgment against  
2 defendant on December 12, 2007. Doc #16. Plaintiff served its  
3 motion and supporting papers on defendant on January 30, 2008. Doc  
4 #21. Defendant did not respond to the motion for default judgment.

5 The court ordered defendant to show cause in writing by  
6 April 11, 2008, why plaintiff's motion for default judgment should  
7 not be granted and judgment entered. Doc #34. The court also  
8 stated that if defendant failed to provide good cause, then  
9 plaintiff's application for default judgment under FRCP 55(b) would  
10 be granted without further appearance by plaintiff. On April 29,  
11 2008, the court extended the deadline to respond to May 9, 2008, in  
12 order to permit additional time for service. Doc #35. Defendant  
13 was served with the order to show cause on April 30, 2008. Doc  
14 #36. Defendant has not responded to the order to show cause.

15 Plaintiff seeks as damages the amount of the unpaid  
16 capital contribution (\$62,376) plus interest, attorney fees and  
17 costs. Having reviewed the complaint and the declarations in  
18 support of default judgment (Doc ##1, 16), the court concludes that  
19 plaintiff has made a sufficient showing to support the requested  
20 judgment.

21  
22 I

23 The court first addresses plaintiff's motion for default  
24 judgment. "Courts have inherent equitable powers to dismiss  
25 actions or enter default judgments for failure to prosecute,  
26 contempt of court, or abusive litigation practices." Televideo  
27 Systems, Inc v Heidenthal, 826 F2d 915, 917 (9th Cir 1987), citing  
28 Roadway Express, Inc v Piper, 447 US 752, 764 (1980), Link v Wabash

1 RR, 370 US 626, 632 (1962), and United States v Moss-American, Inc,  
2 78 FRD 214, 216 (E D Wis 1978).

3           "The general rule of law is that upon default the factual  
4 allegations of the complaint, except those relating to the amount  
5 of damages, will be taken as true." Televideo Systems, 826 F2d at  
6 917-18, quoting Geddes v United Financial Group, 559 F2d 557, 560  
7 (9th Cir 1977). "Upon entry of default judgment, facts alleged to  
8 establish liability are binding upon the defaulting party, and  
9 those matters may not be relitigated on appeal." Danning v Lavine,  
10 572 F2d 1386, 1388 (9th Cir 1978) (citations omitted). Following  
11 default judgment, a defendant is deemed to have admitted the well-  
12 pleaded allegations in the complaint. Benny v Pipes, 799 F2d 489,  
13 495 (9th Cir 1986), amended, 807 F2d 1514 (9th Cir 1987), citing  
14 Thomson v Wooster, 114 US 104, 114 (1884) and In re Visioneering  
15 Construction, 661 F2d 119, 124 (9th Cir 1981).

16           In determining whether to enter default judgment, a court  
17 should consider several factors, including: (1) the possibility of  
18 prejudice to the plaintiff, (2) the merits of the plaintiff's  
19 substantive claim, (3) the sufficiency of the complaint, (4) the  
20 sum of money at stake in the action, (5) the possibility of a  
21 dispute concerning material facts, (6) whether the default was due  
22 to excusable neglect and (7) the strong policy underlying the  
23 Federal Rules of Civil Procedure favoring decisions on the merits.  
24 See Eitel v McCool, 782 F2d 1470, 1471-72 (9th Cir 1986). None of  
25 these factors weigh heavily against entry of default judgment and  
26 several factors weigh strongly in favor of entering default  
27 judgment. Defendant responded to neither plaintiff's complaint,  
28 the clerk's entry of default, the court's order to show cause nor

1 plaintiff's motion for default judgment. By refusing to defend  
2 this suit, defendant leaves no other remedy to plaintiff than  
3 default judgment. Defendant has been warned of the possibility of  
4 default. In addition, it appears that plaintiff's claims are  
5 meritorious and there is little chance of a dispute concerning  
6 material facts. Having considered the Eitel factors, the court  
7 finds that entry of default judgment is appropriate, and  
8 plaintiff's motion for default judgment is therefore GRANTED.

10 II

11 Plaintiff alleges in the complaint that defendant and  
12 Prospero signed a partnership agreement whereby defendant agreed to  
13 contribute \$124,752 to Prospero. Doc #1 at ¶¶6-10. Defendant only  
14 paid half of that contribution, leaving \$62,376 unpaid. Doc #1 at  
15 ¶11. Plaintiff demanded payment by June 17, 2005, but the demand  
16 was unsuccessful. Doc #1 at ¶13. Taking those allegations as  
17 true, the court finds that defendant breached its agreement and  
18 caused harm to plaintiff.

20 III

21 Having established defendant's liability, the court turns  
22 to the relief requested by plaintiff. The damages available to  
23 plaintiff are defined in the partnership agreement. The amount of  
24 principal is set in the contract - defendant owes plaintiff  
25 \$62,376. Plaintiff also requests interest, costs and fees as  
26 described in the agreement.

27 The partnership agreement states that a defaulting  
28 partner must pay interest on the amount of unpaid capital

1 contribution "at an interest rate equal to the floating commercial  
2 rate of interest publicly announced by Bank of America, San  
3 Francisco, California, as its prime rate plus four percent (4%) per  
4 annum, such interest to accrue from the date the contribution to  
5 the partnership was required to be made \* \* \* until the date the  
6 contribution is made \* \* \*." Doc #1 at ¶14. Plaintiff asserts  
7 that the prime rate from June 17, 2005 (the deadline in plaintiff's  
8 demand letter) until November 15, 2007 (just before plaintiff filed  
9 its motion for default judgment) was 5 percent. See Doc #16 (Stern  
10 decl) at ¶¶19-21. Plaintiff asserts that this interest accrued at  
11 \$15.38 per day for a total amount of interest due of \$17,210.22.  
12 See Doc #37 at ¶¶11-13.

13 Plaintiff also requests reimbursement for attorney fees  
14 and the costs of this lawsuit. Paragraph 5.7(a) of the partnership  
15 agreement states that "[i]f any legal proceedings relating to the  
16 failure of a limited partner to make [a capital] contribution are  
17 commenced, such limited partner shall pay all costs and expenses  
18 incurred by the partnership, including attorneys' fees, in  
19 connection with such proceedings." Doc #1 Exh A at ¶5.7(a).

20 Plaintiff requests costs and expenses totaling \$496.74.  
21 This amount includes the \$350.00 filing fee, \$59.50 for service of  
22 process and \$87.24 for general mailing and copying costs. Doc #16  
23 (Levin decl) at ¶¶26-27. The court finds these costs reasonable.  
24 Accordingly, the court awards plaintiff its costs of \$496.74.

25 Plaintiff also requests attorney fees. Doc #16  
26 (memorandum) at 5-6. Plaintiff claims that amount as defendant's  
27 "share" of the attorney fees incurred in the entire case, which  
28 encompasses a total of nine related actions. Plaintiff asserts

1 that it "is not seeking to recover duplicative attorneys' fees from  
2 the various defendants." Doc #16 (Levin decl) at ¶24. Plaintiff  
3 states that "fees for matters that were only performed once are  
4 accounted for and divided by nine. Examples of this would be the  
5 drafting of the administrative motion to consider the cases related  
6 or reading the partnership agreement." Doc #16 (Levin decl) at  
7 ¶24. Plaintiff states further that "[f]or tasks that must be  
8 performed for each individual defendant such as the drafting of the  
9 complaint and drafting of the request for default, counsel kept  
10 track of the time it took to draft all of the documents and then  
11 divided the time by the number of the defendants in order to be  
12 fair to each defendant. This is due to the fact that the first  
13 complaint drafted would necessarily be more time-consuming than the  
14 last." Doc #16 (Levin decl) at ¶25. Overall, plaintiff states  
15 that defendant's share is \$4,497.16. Doc #27 (Levin supplemental  
16 decl) at ¶10. The court finds that the requested fees appear well-  
17 within the guideline rates established in the Laffey matrix used in  
18 the District of Columbia. See In Re HPL Technologies, Inc, 366 F  
19 Supp 2d 912 (N D Cal 2005); [http://www.usdoj.gov/usao/dc/Divisions/](http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_6.html)  
20 [Civil\\_Division/Laffey\\_Matrix\\_6.html](http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_6.html), citing Laffey v Northwest  
21 Airlines, Inc, 572 F Supp 354 (DDC 1983), aff'd in part, rev'd in  
22 part on other grounds, 746 F2d 4 (DC Cir 1984). Accordingly, the  
23 court awards \$4,497.16 in attorney fees.

24 In sum, the court awards plaintiff \$84,580.12, consisting  
25 of \$62,376 in contract damages, \$17,210.22 in interest, \$4,497.16  
26 in attorney fees and \$496.74 in expenses.

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IV

For the foregoing reasons, the court GRANTS plaintiff's motion for default judgment. Doc ##15-16. The clerk is directed to enter judgment in favor of plaintiff and against defendant as set forth above and to terminate all pending motions.

IT IS SO ORDERED.



VAUGHN R WALKER  
United States District Chief Judge